IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.397 of 2001.

Date of decision:20.12.2006.

Shiv Kumar & Another **….Petitioners**

Versus

Financial Commissioner(Appeals) and Others. **…..Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners: **Mr.Praneet Gupta, Advocate.**

For Respondent No.1: **Mr.C.B. Singh, Deputy Advocate General.**

For Respondents 2 to 8: **Mr.Rakesh Jaswal, Advocate.**

Dev Darshan Sud, J.

The petitioners have approached this Court seeking appropriate writ, order or direction for quashing the order dated 27.5.1996, passed by the Commissioner, Mandi Division Mandi in case No.189/89, (Annexure P-2) and the order of the Financial Commissioner (Annexure P-3) dismissing the revision filed by the petitioners against the order of the Divisional Commissioner. A further direction is sought for by directing respondent No.1 to decide the case of the petitioners afresh.

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

The brief facts relevant for the purposes of the present petition are that petitioner No.1 had applied to the Collector under the provisions of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the "Act") for resumption of the land which, according to him, he was entitled to under the provisions of the Act as aforesaid. For this purpose, an application was moved by him which was rejected. An appeal was preferred by the petitioner against the order dated 28.3.1988 passed by the District Collector, Bilaspur, challenging the legality and the validity of the order. In the application filed by the petitioner before the Land Reforms Officer, Ghumarwin for resumption of land under Rule 21 of the H.P. Tenancy and Land Reforms Rules, 1975, it was stated that the petitioner was entitled to retain the land as detailed therein. The petitioners had submitted that the application was being filed at a late stage since they were minors and had been litigating for their rights before the Civil Court. The petitioners' case further is that Civil Suit No.75/1 was filed in the Court of Sub Judge, Ghumarwin, District Bilaspur against the respondents Shri Sunder, Smt.Shankri, Smt.Tirthu, Smt.Ramjani and Smt.Persinu in which a decree for declaration, was prayed for, to the effect that the plaintiffs are owners in possession of the land measuring 6.15 Bighas, comprised in

Khasra No.107 and 111, Khata Khatauni No.24/40, situated in village Kharota, Pargana Sunhani, Tehsil Ghumarwin, District Bilaspur, H.P. The petitioner had further prayed for a declaration that the order of the Compensation Officer dated 31.12.1973 declaring the defendants in the suit as owners was null and void having been obtained by fraud and misrepresentation. The learned trial Court, after trial, held that the petitioners were minors on 31.12.1973 on the date when the Compensation Officer had passed the order by which the respondents had been granted ownership rights. Such order being against the rights of the minor was null and void. While decreeing the suit, the learned Court held that the petitioners, who were plaintiffs in the suit, were owners of 1.13 Bighas of land. He quashed and set aside the order of the Compensation Officer.

Not being satisfied with the judgment, an appeal was preferred by the petitioners in the Court of the learned Additional District Judge, Mandi and Shimla Divisions, who vide his judgment dated 4.3.1982 dismissed the appeal upholding the judgment of the learned trial Court. Another judgment in Civil Suit No.180/1 of 1989, titled Jagdish and Others vs. Sudershan and Shiv Kumar has been placed on record in which a declaration has been sought by the plaintiffs (respondents in the present writ

petition)to the effect that they are owners in possession of the land as described in the suit. While decreeing the suit, learned trial Court held that the plaintiffs in the suit are declared to be in possession of the suit land as co-owners and the revenue entry showing the defendants to be in possession of 1/4th share is declared to be wrong and illegal. The defendants (petitioners herein) were restrained permanently from being interfering in the suit land in any manner whatsoever except in due process of law.

Learned counsel for the parties have made submissions regarding the merits and demerits of the judgment(s). It is, however, not necessary for me to go into that aspect of the case. The basic grievance of the petitioners is that the application for resumption made by them could not be dismissed solely on the ground that it was barred by time. Learned counsel for the petitioners submits that on the date when the order was passed, the petitioners were minors and the matter was pending in a Civil Court. The appeal preferred by the petitioners was a continuation of the suit and in any event, the matter having been decided only on 4.3.1982, it was on that date that the petitioners were in law, capable of making an application for resumption.

On going through the order passed by the Commissioner, I find that he holds that although the

petitioners were minors on 31.12.1973, yet the provisions of the H.P. Tenancy and Land Reforms Act and the Rules are clear. According to him, sub-section 8(a) and 9(a) of Section 104 of the Act and sub-rules (2)(ii) of Rule 21 of the Rules are clear and unambiguous in providing a period of six months prescribed for making an application after the date of attainment of majority. According to him, the appellant had attained majority in 1976 and the application having been made in 1982, was patently barred by time. On the question regarding pendency of the case, before the Civil Court, he holds that the Civil Court had no jurisdiction to decide the matter. The same view has been expressed by the Financial Commissioner to hold that the limitation would start to run from the date when the petitioners attained majority and not when lis between the parties terminated on 4.3.1982. He further holds that the contention of the petitioner that the matter remained in litigation even after the period when he attained majority is not acceptable. To support these findings, he holds that when the Civil Suit had terminated on 14.12.1977, the petitioner did not care to apply for resumption of land and therefore, their grievance was not justified. To say the least, this is not the correct interpretation placed by the respondents on the law and facts. There is no dispute regarding

the date on which the petitioner attained majority. There is also no dispute regarding the pendency of the cases before the Civil Courts. The Revenue Officers as also the Commissioner and Financial Commissioner are not correct in holding that the pendency of the case before the Civil court should not be considered and that such courts do not have any jurisdiction to try the suit. It is not for these Authorities to pronounce upon the jurisdiction of the Civil Courts as the Civil Courts are subject to the control of this Court. Neither the Collector or the Financial Commissioner can assume jurisdiction or power to pronounce on the legality or jurisdiction of orders passed by any Civil Court. Granting and acceding such powers to them will lead to startling consequences leading to judicial anarchy. The record shows that proprietary rights have been granted by the Assistant Collector 2nd Grade which is against the Rules. Rule 29 of the H.P. Tenancy and Land Reforms Act provides that such exercise should be undertaken by the Collector Ist Grade. This fact itself contradicts the findings in the orders passed that the record of the Courts has been considered carefully by the Collector and the Financial Commissioner. The petitioners, who were under disability during the minority, could not be expected to pursue the case before the Compensation Officer. The matter regarding the entitlement of

retention of land by the petitioners was also before the Civil Court. It is well settled that the appeal is continuation of the suit. The Revenue Authorities cannot be granted any supervisory control or appellate powers over the Civil Courts. They are bound to obey the judgments passed by the Civil Court(s) and in case the judgment according to them is wrong, the remedy open to the party was to have challenged the same in appropriate proceedings before a Court of competent jurisdiction. The limited jurisdiction granted to such Authorities, does not entitle them to ignore the judgment and decree passed by the Civil Courts whether such judgments are right or wrong according to their view.

I, therefore, hold that the petitioners were entitled to make their application for resumption after the lis had terminated between the parties on 4th March, 1982 and the application could not be treated as having been barred by time.

Learned counsel for the petitioners, relying upon a case in ***Besru vs. Shibu, 1999(1) Shim.L.C.343,*** submits that the order conferring proprietary rights in the case has been passed by the Assistant Collector 2nd Grade, whereby the mutation has been attested in favour of the respondents. He submits that in terms of Sections 104(8)(a) and 112 read with H.P. Tenancy and Land

Reforms Rules, 1975, especially Rules 27, 28 and 29, it is only Assistant Collector Ist Grade who has jurisdiction to pass such order or to attest mutation etc. He has drawn my attention to paragraph-10 of the judgment. There can be no dispute on this proposition of law. The competent Officer to pass any order would be Assistant Collector Ist Grade. However, it is not necessary for me to deal with this aspect in detail as I have already held that the petitioners being minors, who were diligently pursuing the rights before a Civil Court, could not be denied the legitimate claim on the ground of limitation.

The writ petition is, accordingly, allowed. The order passed by the Financial Commissioner (Annexure P-3), affirming the order passed by the Divisional Commissioner (Annexure P-2) is quashed and set aside. It is directed that the Financial Commissioner shall decide the matter afresh in accordance with law.

Both the parties will be sent notice for appearance and the matter determined expeditiously considering the fact that the litigation has been pending since the year 1974. There shall be no order as to costs.

December 20, 2006 **(Dev Darshan Sud)**
(aks) **Judge.**